

A CERTIFIED TRUE COPY

FEB 13 2006

ATTEST
FOR THE JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

RELEASED FOR PUBLICATION

JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

FEB 13 2006

FILED
CLERK'S OFFICE

FILED

FEB 24 2006

U.S. COURT OF
FEDERAL CLAIMS

DOCKET NO. 1634

**BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION
IN RE PEANUT CROP INSURANCE LITIGATION***Texas Peanut Farmers, et al. v. U.S.A.*, United States Court of Federal Claims, C.A. No.
1:03-445**BEFORE WM. TERRELL HODGES, CHAIRMAN, JOHN F. KEENAN, D.
LOWELL JENSEN, J. FREDERICK MOTZ, ROBERT L. MILLER, JR.,
KATHRYN H. VRATIL AND DAVID R. HANSEN, JUDGES OF THE
PANEL****ORDER DENYING TRANSFER**

Before the Panel is a motion brought, pursuant to 28 U.S.C. § 1407, by plaintiffs in a United States Court of Federal Claims action (*TPF*). Movants ask the Panel to transfer *TPF* to the Eastern District of North Carolina for inclusion in the MDL-1634 proceedings centralized there before Judge Malcolm J. Howard. The Court of Claims is currently under an appellate mandate to transfer the claims of *TPF*'s constituent plaintiffs to the federal districts (apparently as many as fourteen) where the various *TPF* plaintiffs should, under the relevant jurisdictional statute, have brought their claims. Entry of a Court of Claims order enforcing this mandate would create new actions pending in federal district courts. This presumably accounts for the *TPF* plaintiffs' alternative request to "issue as many as 14 separate orders transferring the cases to the transferee district..." even though at this point in time there are no such cases yet pending in district courts that could be subject to Section 1407 transfer by the Panel for inclusion in the MDL-1634 pretrial proceedings. Defendant United States of America opposes both of the plaintiffs' requests.

On the basis of the papers filed and hearing session held, the Panel finds that Section 1407 transfer of *TPF* to the Eastern District of North Carolina is inappropriate at this time. Given the unique circumstances under which this matter has come before the Panel, we are persuaded that denial of transfer is appropriate in order to permit the Court of Claims to implement the existing mandate of the appellate court. If implementation of the mandate results, as contemplated, in the creation of new civil actions which share questions with previously centralized MDL-1634 actions and which are pending in federal district courts other than the Eastern District of North Carolina transferee district, then procedures are available whereby the Panel can initiate the process of Section 1407 transfer without further delay. See Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001).

by leave of the Judge

A TRUE COPY
TEST:

BRIAN BISHOP

Clerk, U.S. Court of Federal Claims

By

Deputy Clerk

- 2 -

IT IS THEREFORE ORDERED that the motion for Section 1407 transfer of this action is denied.

FOR THE PANEL:

A handwritten signature in black ink, appearing to read "Wm. Terrell Hodges", written in a cursive style.

Wm. Terrell Hodges
Chairman

UNITED STATES OF AMERICA
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

CHAIRMAN:
Judge Wm. Terrell Hodges
United States District Court
Middle District of Florida

MEMBERS:
Judge John F. Keenan
United States District Court
Southern District of New York

Judge D. Lowell Jensen
United States District Court
Northern District of California

Judge J. Frederick Motz
United States District Court
District of Maryland

Judge Robert L. Miller, Jr.
United States District Court
Northern District of Indiana

Judge Kathryn H. Vratil
United States District Court
District of Kansas

Judge David R. Hansen
United States Court of Appeals
Eighth Circuit

DIRECT REPLY TO:

Michael J. Beck
Clerk of the Panel
One Columbus Circle, NE
Thurgood Marshall Federal
Judiciary Building
Room G-255, North Lobby
Washington, D.C. 20002

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February 13, 2006

Brian Bishop, Clerk
U.S. Court of Federal Claims
105A Howard T. Markey National Courts Bldg.
717 Madison Place, N.W.
Washington, DC 20439

Re: MDL-1634 -- In re Peanut Crop Insurance Litigation

Texas Peanut Farmers, et al. v. U.S.A., United States Court of Federal Claims, C.A. No. 1:03-445

Dear Mr. Bishop:

I am enclosing a certified copy of an order filed today by the Panel in the above matter.

Very truly,

Michael J. Beck
Clerk of the Panel

By 
Deputy Clerk

Enclosure

cc: Transferee Judge: Judge Malcolm J. Howard
Transferor Judge: Judge Nancy B. Firestone

UNITED STATES COURT OF FEDERAL CLAIMS

Docket No. 03-445C

MEMORANDUM

TO: JUDGE Friedman
FROM: CLERK'S OFFICE

The attached was received on 2-21-06
and the following defect(s) is/are noted:

1. ☐ Untimely, due to be filed by _____ [Rule 7.2]
2. ☐ Proof of service: [Rule 5.1]
☐ is missing; ☐ is not signed and/or dated;
☐ shows service on wrong attorney or of wrong item;
☐ is not attached to each document or copy
3. ☐ Not signed by the attorney of record [Rules 11 and 83.1(c)(2)]
4. ☐ Does not comply with the provisions of Rule:
 - ☐ 5.2(a)(1)(A) Re: table of contents or index to appendix is missing (or in wrong location)
 - ☐ 5.2(a)(1)(G) Re: index to appendix is to be located in both the front of the brief and in front of the appendix
 - ☐ 5.2(b) Re: length of briefs or memorandum
 - ☐ 5.3(c) Re: binding
 - ☐ 5.3(d) Re: original/copies missing
 - ☐ 5.3(g) Re: Judge's name on all filings
 - ☐ 7(b) Re: brief, supporting memorandum, affidavits shall be attached to motion
 - ☐ 24(c) Re: motion to be accompanied by a pleading
 - ☐ 56(h) Re: proposed findings and/or response to proposed findings is missing or not a separate document
 - ☐ 56.1(b) Re: statement of facts and/or counter-statement of facts is missing or not a separate document
 - ☐ 77.1(a) Re: improper use of the night box
 - ☐ 83.1(c)(1) Re: one attorney for a party; attorney to be an individual not a firm
 - ☐ Re: _____
5. ☐ Original affidavit(s)/declaration(s) is/are missing
6. ☒ No provision in the Rules (or court order) for the filing of this item
7. ☐ This case has been designated as an **ECF** case.
8. ☐

Debbie
Deputy Clerk